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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

AARON GREENSPAN,

Plaintiff,

v.

OMAR QAZI, SMICK ENTERPRISES, INC.,
ELON MUSK, and TESLA, INC.,

Defendants.

Case No. 3:20-cv-03426-JD

**REQUEST FOR JUDICIAL
NOTICE IN SUPPORT OF
PLAINTIFF'S SECOND
AMENDED COMPLAINT**

Judge: Hon. James Donato
Complaint Filed: May 20, 2020
SAC Filed: August 26, 2020

Pursuant to Federal Rule of Evidence 201 and *Rosales-Martinez v. Palmer*, 753 F.3d 890, 894-895 (9th Cir. 2014), Plaintiff Aaron Greenspan requests that the Court incorporate by reference or take judicial notice of the documents identified below in support of Plaintiff's Second Amended Complaint ("SAC"). These documents did not yet exist and/or their existence was not yet known to Plaintiff at the time the SAC was filed or at the time of Plaintiff's previous request on November 20, 2020.

I. DOCUMENTS SUBJECT TO THIS REQUEST

Exhibit	Description	Basis for Notice and/or Incorporation
E	Tesla, Inc. "Settlement and Release Agreement" for Vehicle Repair Containing Clause 2(l), Requiring That "conditions of this Settlement shall remain confidential	Publicly available from a reliable source; SAC Issue No. 18

	and private in all respects” Publicly Filed in the Supreme Court of Nassau County, New York November 18, 2020	
F	CNBC Article “Musk to Tesla employees: ‘Our stock will immediately get crushed like a souffle under a sledgehammer!’ if we don’t control costs” by Lora Kolodny Dated December 1, 2020 and Updated December 2, 2020, Republishing December 1, 2020 E-Mail From Elon Musk Stating, “When looking at our actual profitability, it is very low around 1% for the past year.”	Publicly available from a reliable source; SAC ¶¶ 3, 4, 309, 323, 338
G	YouTube Video of Elon Musk Interview at “Alex Springer Award 2020” Dated December 1, 2020, With Elon Musk Stating, “I’m extremely confident of achieving full autonomy and releasing it to the Tesla customer base <i>next</i> year” at https://youtube.com/watch?v=AF2HXId2Xhg&t=1606 . (This Exhibit is not attached but is available via the above hyperlink.)	Publicly available from a reliable source; SAC Issue Nos. 19, 23

II. FACTUAL BASIS

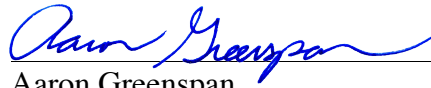
Judicial notice is proper because all of these documents did not yet exist when the SAC was filed on August 26, 2020, but are now available from reliable public sources. As such, the documents’ existence and authenticity cannot reasonably be questioned.

News articles and court exhibits from other lawsuits are routinely subject to judicial notice. Other courts in the Ninth Circuit have previously taken judicial notice of digital video that is available to the public. “The video is referenced in the Complaint and it is publicly available. It is also from a source whose authenticity cannot be questioned. Accordingly, Plaintiff’s request for judicial notice is GRANTED.” *Gregory Blatt v. Rosette Pambakian et al*, Case No. 2:19-cv-07046-MWF-FFM at 30 (C.D. Cal. January 9, 2020). Here, the video, posted to YouTube by Axel Springer SE from events in Berlin, Germany streamed live on December 1, 2020, could not be referenced in the SAC because it did not yet exist.

III. CONCLUSION

For the aforementioned reasons, Plaintiff respectfully requests that the Court take judicial notice of the above referenced documents.

1 Dated: December 3, 2020

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EXHIBIT E

Tesla, Inc. “Settlement and Release Agreement” Publicly Filed in the Supreme Court of Nassau County, New York November 18, 2020

SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement (the "Settlement") is entered into by and between **Steven Legum and Iris Legum** ("Releasing Parties") and **Tesla, Inc.**, a Delaware corporation ("Tesla") (together, the "Parties"), as of January 10, 2018.

WHEREAS, Releasing Parties purchased from Tesla a **2010 Tesla Roadster** bearing Vehicle identification number 5YJRE1A39A1001154 (together with all key fobs, charging equipment, accessories, components, parts, and other items delivered with the Vehicle, the "Vehicle");

WHEREAS, Releasing Parties have demanded that Tesla replace high-voltage battery on the Vehicle (the "Battery") and have alleged that Tesla breached the terms of the Vehicle's warranty and other claims in an action entitled *Legum v. Tesla Motors, et ano.*, Index no. 1/17, Supreme Court, Nassau County filed on January 2, 2017 (the "Complaint");

WHEREAS, Tesla denies all liability, wrongdoing, fault, and/or defect with respect to the Battery, the allegations in the Complaint, or otherwise; and

WHEREAS, the Parties nevertheless desire to fully and finally resolve all claims between them;

NOW, THEREFORE, the Parties agree as follows:

1) Pursuant to this Settlement, in consideration for the execution of this Settlement and dismissal of the Complaint with prejudice, Tesla shall agree to the following:

a) Tesla shall install, at its own cost and expense, a Replacement Battery on the Vehicle, in the manner specified on Tesla's website located here: <http://shop.teslamotors.com/products/roadster-3-up-grade>. Releasing Parties' shall obtain all of the rights and benefits of the replacement as though the same were purchased from Tesla.

2) Pursuant to this Settlement, in consideration of an agreement by Tesla to withdraw all affirmative defenses it may raise in defense of the claims alleged in the Complaint, Releasing Parties agree to the following:

a) Releasing Parties' counsel shall tender to Tesla's counsel an executed stipulation of discontinuance, with prejudice (the "Stipulation"), discontinuing the Complaint within seven (7) days of executing this Release, and Releasing Parties' counsel shall also file the Stipulation within seven (7) days of receiving the mutually executed Stipulation from Tesla's counsel. Releasing Parties' counsel shall provide Tesla's counsel with a file-stamped copy of the Stipulation and a copy of the Court's Order dismissing the Complaint with prejudice.

b) Releasing Parties' shall pay to Tesla the sum of \$10,000.00, as provided in below in Sections 1(b)(1) and 1(b)(2).

1. Upon execution of this Settlement, Releasor shall place an order for the replacement battery at: <http://shop.teslamotors.com/products/roadster-3-up-grade> (the "Replacement Battery") and deposit the \$5,000.00 required thereunder. Releasor acknowledges that there will be a delay attendant to

SETTLEMENT AGREEMENT

the replacement of the battery and that by placing the order in the aforesaid manner, Releasor will be placed in the queue to obtain such Replacement Battery.

2. Upon completion of the Replacement Battery and the attendant software upgrade, Releasor shall pay a second payment of \$5,000.00.

c) Upon execution of the Settlement, Releasing Parties, on behalf of themselves and their representatives, heirs, successors, beneficiaries, assigns, and any other person or entity claiming on their behalf, shall be deemed to have fully, finally, and forever released, relinquished, and discharged against Tesla and its affiliates, subsidiaries, distributors, shareholders, officers, directors, agents, employees, attorneys, heirs, successors, assigns, and any person or entity involved in the design, manufacture, assembly, distribution, marketing, lease, sale, service, maintenance, or repair of the Battery or any allegations raised in the Complaint (collectively, "Released Parties") any and all causes of action, claims, demands, rights, suits, obligations, debts, contracts, agreements, promises, liabilities, damages, charges, penalties, losses, costs, expenses, and attorneys' fees, whether known or unknown, in law or equity, fixed or contingent, which Releasing Parties have or may have against the Released Parties relating in any way to the purchase, ownership, operation, or maintenance of the Battery or any allegations raised in the Complaint, including without limitation claims related to any alleged nonconformity, design or manufacturing defect, condition, or repair that were or could have been asserted in connection with the Battery or any allegations raised in the Complaint (the "Released Claims"). Releasing Parties understand that by agreeing to this Settlement, they are forever precluded from taking any action, either individually or together with any other party, to initiate, advise, encourage, commence, prosecute, participate in, or aid in any legal proceeding, lawsuit, or arbitration with respect to the Released Claims.

d) Tesla has determined that there is no defect, failure, or nonconformity with respect to the Battery, including with respect to its component parts and accessories. Releasing Parties acknowledge that Tesla's repurchase/replacement of the Battery is made as a gesture of goodwill and as a customer service accommodation only.

e) Releasing Parties represent, covenant, declare, and warrant that: (i) they are authorized to give a full and complete release of the Released Claims; (ii) they are authorized to sign this Settlement and to release and transfer possession, ownership, and title of the Vehicle to Tesla; (iii) all information Releasing Parties have provided to Tesla regarding the Vehicle and Battery are true and complete, and Releasing Parties have not omitted or misrepresented any relevant information regarding the Vehicle and the Battery or its condition or operation; (iv) all information Releasing Parties have provided to Tesla regarding their indebtedness, payments made, and out-of-pocket costs in connection with the Vehicle and the Battery are true and complete and Releasing Parties has not omitted or represented any relevant information in connection therewith; (v) Releasing Parties are the sole owners of the Vehicle and there are no other registered owners, title holders, or lienholders of the Vehicle, or encumbrances of any kind, except as expressly referenced herein; (vi) Releasing Parties have not assigned or otherwise transferred any interest in the Released Claims or the Vehicle that are the subject of this Settlement.

f) Releasing Parties agree that the consideration specified in paragraph 1 above is the entire and sole consideration for this Settlement, and that they are responsible for costs and expenses in excess of such consideration, including attorneys' fees and legal

expenses.

g) Neither Tesla's replacement of the Battery nor the negotiations preceding this Settlement shall be considered an admission of liability or wrongdoing or an acceptance of any facts by Tesla, which Tesla continues to deny and dispute. This Settlement shall not be treated as or considered evidence of Released Parties' liability or any other issue, and shall not be admissible in any action or proceeding, except an action to enforce this Settlement.

h) Releasing Parties and their undersigned attorney(s) have reviewed the entire Settlement, and the contents of this Settlement have been explained to Releasing Parties by their attorney(s) prior to its execution.

i) Releasing Parties acknowledge that this Settlement bars any future legal claim with respect to the Battery based on any alleged product liability or breach of ongoing warranty coverage, including without limitation claims for alleged nonconformity (including any alleged nonconformity that has been the subject of a repair order, demand, or communications between Releasing Parties and Tesla), defect, condition, repair, violation of any applicable lemon law, breach of express or implied warranty, breach of the Magnuson-Moss Warranty Act, breach of any applicable state or federal consumer fraud or consumer protection statute, or for any revocation of acceptance claim, whether the events constituting the basis of such claim occur before or after the execution of this Settlement, and whether known or unknown at the time of this Settlement.

j) Releasing Parties agree that this is a final settlement and disposition of all Released Claims. Releasing Parties acknowledge that there is a risk that, after execution of this Settlement, Releasing Parties may discover, incur, or suffer other alleged damages, personal injuries, property damage, loss, death, disability, and/or monetary detriment that are directly or indirectly related to the Released Claims and the Battery, but which are unknown and unanticipated at the time this Settlement is signed. Releasing Parties further acknowledge that there is a risk that an injury presently known may be or may become more serious than Releasing Parties now expects or anticipates. By entering into this Settlement, Releasing Parties knowingly assume and accept these risks and agrees that this Settlement shall apply to all unknown or unanticipated events as well as those known or anticipated. After consulting with his undersigned attorney(s), Releasing Parties acknowledge and waive the provisions of California Civil Code section 1542, or any other similar provision under state or federal law, which states:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

k) If any action or proceeding is brought by any third-party based, in whole or in part upon, or arising out of, or in any way connected with, any facts or claims made or released herein, arising or occurring up to and including the date of the execution of this Settlement or date of final delivery of the Battery to Tesla, whichever date is later, Releasing Parties shall indemnify and hold Released Parties harmless from any and all such claims, demands, obligations, causes of action, damages, and liabilities, including without limitation court costs and attorneys' fees arising in connection therewith.

l) To the fullest extent permissible consistent with California Civil Code section

SETTLEMENT AGREEMENT

1793.26, Releasing Parties agree that the terms and conditions of this Settlement shall remain confidential and private in all respects (collectively, "Confidential Information"). Except as may be required by law, Releasing Parties may disclose Confidential Information only to the extent necessary in any proceedings to enforce, or to obtain professional advice with respect to, this Settlement. Releasing Parties and their agents and representatives agree that they will not publicize, directly or indirectly, any Confidential Information or otherwise disclose Confidential Information to any third party except as specified above.

3) If any clause or provision of this Settlement shall be deemed unenforceable through court order, the remainder of this Settlement shall remain in effect and shall be fully enforceable. The failure of any party to enforce at any time any provision of this Settlement shall not be construed as a waiver of such provision, nor in any way to affect the validity of this Settlement or the right of any party thereafter to enforce each and every such provision. No waiver of any breach of this Settlement shall constitute a waiver of any other breach. Nothing in this Settlement or the negotiations or discussions related to the foregoing is intended to be or shall be deemed to constitute a waiver of any applicable privilege or immunity, including without limitation the accountants' privilege, the attorney-client privilege, the joint defense or common interest privilege, or attorney work product protection. If either Party institutes a legal proceeding to enforce or interpret this Settlement, the prevailing party in such a proceeding shall be entitled to recover all litigation fees and expenses, including without limitation reasonable attorney's fees, expert witness fees, and costs.

4) Once executed, this Settlement shall be binding upon and inure to the benefit to each of the Parties, and their respective heirs, executors, administrators, trustors, trustees, predecessors, successors, assigns, attorneys, consultants, and experts.

5) This Settlement contains the entire agreement between Releasing Parties and Tesla concerning the Battery. Except as expressly set forth herein, this Settlement is executed without reliance on any promise, representation, or warranty by any Party or any Party's representative, and any such prior promises, representations, or warranties are null and void. This Settlement may be amended or modified only by a written instrument signed by Releasing Parties and Tesla.

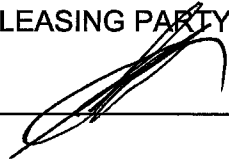
6) This Settlement may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original of this Settlement, but all of which constitute one and the same agreement. Facsimile and electronic signatures shall be valid.

7) This Settlement shall be interpreted in accordance with and governed in all respects by California law as applied to agreements made and entered into within the State of California.

SIGNATURE PAGE FOLLOWS

Intending to be legally bound by the terms of this Settlement and Release Agreement, the undersigned Parties have affixed their signature on the date specified below.

RELEASING PARTY, Steven Legum



Date

1/17/18

RELEASING PARTY, Iris Legum



By:

Date

1/17/18

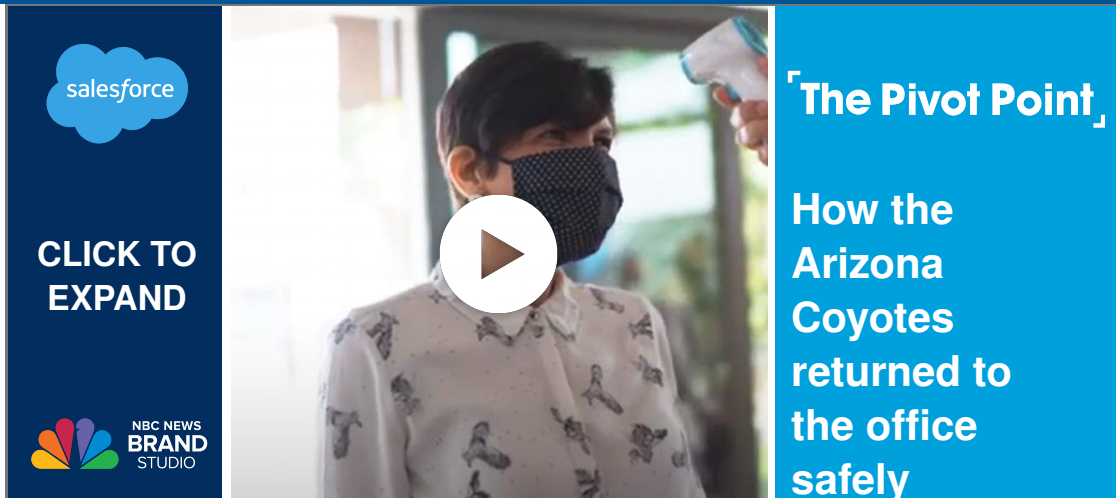
TESLA, INC.

Date

EXHIBIT F

CNBC Article “Musk to Tesla employees: ‘Our stock will immediately get crushed like a souffle under a sledgehammer!’ if we don’t control costs” by Lora Kolodny

Dated December 1, 2020 and Updated December 2, 2020



TECH

Musk to Tesla employees: 'Our stock will immediately get crushed like a souffle under a sledgehammer!' if we don't control costs

PUBLISHED TUE, DEC 1 2020•3:34 PM EST UPDATED WED, DEC 2 2020•8:33 AM EST



Lora Kolodny
@LORAKOLODNY

SHARE    

KEY POINTS

- Tesla CEO Elon Musk sent an email to employees Tuesday warning they will have to control costs in order to maintain the company's streak of narrow quarterly profits.
- "Investors are giving us a lot of credit for future profitability but if, at any point, they conclude that's not going to happen, our stock will immediately get crushed like a souffle under a sledgehammer!" Musk wrote in the email, which was obtained by CNBC.
- Tesla shares continue to trade at all-time highs, and the stock will join the S&P 500 later this month.



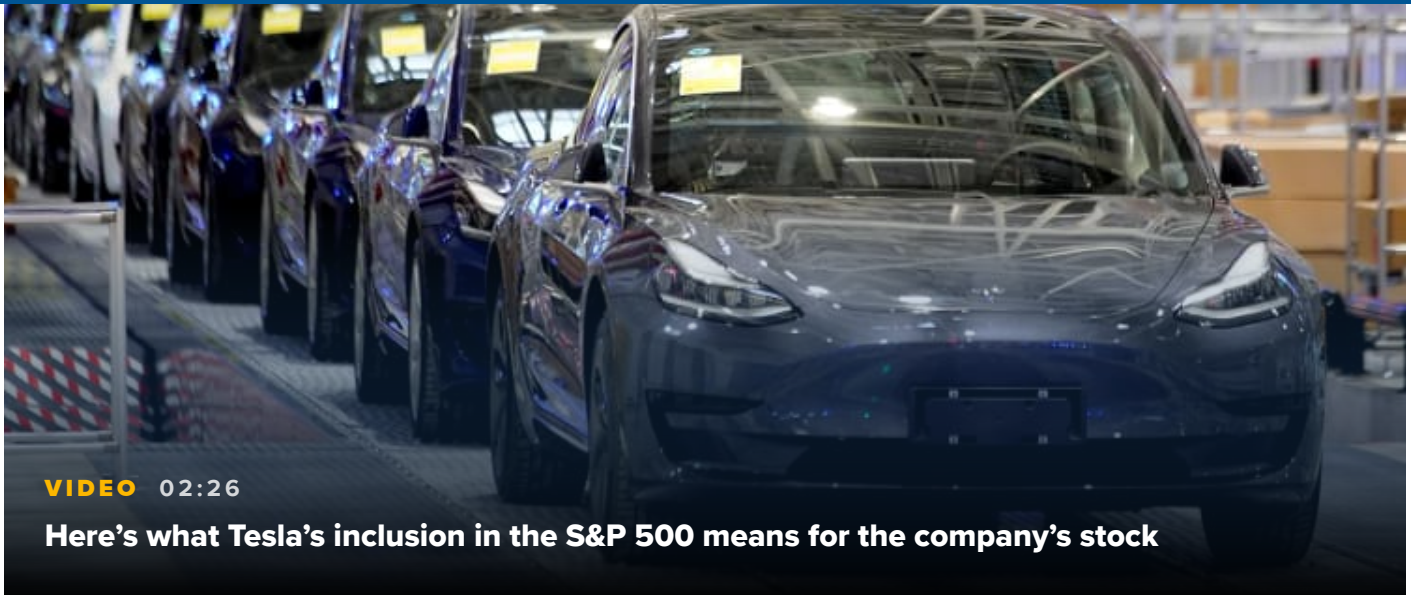
Elon Musk, CEO of Tesla, speaks to media representatives at the Tesla Gigafactory construction site in Grünheide near Berlin, September 3, 2020.

Julian Stähle | picture alliance via Getty Images

[Tesla](#) CEO Elon Musk sent an e-mail to employees on Tuesday warning them that they need to control their spending in order to continue squeaking out quarterly profits, even though shares of Tesla are trading at all-time highs ahead of the company's inclusion in the S&P 500.

This year, among other things, Tesla began spending to build a new factory near Austin, Texas, and another near Berlin. The company also embarked on a makeover of its paint facilities, which are part of its U.S. vehicle assembly plant in Fremont, California.

“Investors are giving us a lot of credit for future profitability but if, at any point, they conclude that's not going to happen, our stock will immediately get crushed like a soufflé under a sledgehammer!” Musk wrote in the email, which was obtained by CNBC.



Electric vehicle news site Electrek [previously reported](#) the contents of Musk's email.

In early 2020, amid sluggish auto sales the world over, Tesla cut some employees' pay temporarily, slashed contracts with temporary workers and fired an undisclosed number of workers after an annual performance review process. It has since rehired contractors and restored employee pay.

The Tuesday e-mail echoes previous statements by Musk but does not specify how Tesla plans to mind its budget.

On the company's third-quarter earnings call, Musk told analysts and shareholders, "We're trying to spend money at the fastest rate that we can possibly spend it and not waste it."

But on that same call, Tesla CFO Zachary Kirkhorn said Tesla plans to ramp up its capital expenditures by \$2 billion versus its prior stated plans to \$2.5 billion in 2021 and 2022. Among other things, he said, the increased spending would enable Tesla to "in-source" things like some of its battery cell manufacturing.

Tesla raised \$5 billion in September through an equity raise but needs to pay down about \$1 billion in this, its fourth, quarter related to converts.

Here's the full e-mail from Musk shared with employees, as transcribed by CNBC:

From: Elon Musk

To: Everybody

Subj. Costs are extremely important!

Date: Dec. 1, 2020 [time redacted]

At a time like this, when our stock is reaching new heights, it may seem as though spending carefully is not as important. This is definitely not true!

When looking at our actual profitability, it is very low around 1% for the past year. Investors are giving us a lot of credit for future profitability but if, at any point, they conclude that's not going to happen, our stock will immediately get crushed like a souffle under a sledgehammer! Much more important, in order to make our cars affordable, we have to get smarter about how we spend money. This is a tough Game of Pennies, requiring thousands of good ideas to improve part cost, a factory process, or simplify the design while increasing quality and capabilities. A great idea would be one that saves \$5, but the vast majority are \$0.50 here or \$0.20 there.

In order to make the electric revolution happen, we must make electric cars, stationary batteries and solar affordable to all.

Thanks and great working with you as always,
Elon





Here's how Elon Musk eclipsed Bill Gates to become the second-richest person in the world



Now is the time for exposure

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